

Senate Bill 24

By: Senators Grant of the 25th, Seay of the 34th, Harp of the 29th, Crosby of the 13th and Stoner of the 6th

AS PASSED

AN ACT

To amend Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to probation, so as to provide for comprehensive provisions regarding management of probationers; to provide for the 'Probation Management Act'; to provide administrative sanctions as an alternative to judicial modification or revocation of probation; to provide for preliminary administrative hearings and hearing officers; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to probation, is amended by adding a new article to read as follows:

"ARTICLE 9

42-8-150.

This article shall be known and may be cited as the 'Probation Management Act.'

42-8-151.

For purposes of this article, the term:

- (1) 'Commissioner' means the commissioner of corrections.
- (2) 'Chief probation officer' means the highest ranking field probation officer in each judicial circuit.
- (3) 'Department' means the Department of Corrections.
- (4) 'Electronic monitoring' means supervising, mapping, or tracking the location of a probationer by means including electronic surveillance, voice recognition, facial recognition, fingerprinting or biometric scan, automated kiosk, automobile ignition

interlock device, or global positioning systems which may coordinate data with crime scene information.

(5) 'Hearing officer' means an impartial department employee or representative who has been selected and appointed to hear alleged cases regarding violations of probation for administrative sanctioning.

(6) 'Initial sanction' means the sanction set by the judge upon initial sentencing.

(7) 'Intensive probation' means a level of probation supervision which includes, but is not limited to, curfews, community service, drug testing, program participation, special conditions of probation, and general conditions of probation as set forth in Code Section 42-8-35.

(8) 'Options system day reporting center' means a state facility providing supervision of probationers which includes, but is not limited to, mandatory reporting, program participation, drug testing, community service, all special conditions of probation, and general conditions of probation as set forth in Code Section 42-8-35.

(9) 'Options system probationer' means a probationer who has been sentenced to the sentencing options system.

(10) 'Probation supervision' means a level of probation supervision which includes, but is not limited to, general conditions of probation as set forth in Code Section 42-8-35 and all special conditions of probation.

(11) 'Residential substance abuse treatment facility' means a state correctional facility that provides inpatient treatment for alcohol and drug abuse.

(12) 'Sentencing options system' means a continuum of sanctions for probationers that includes the sanctions set forth in subsection (c) of Code Section 42-8-153.

42-8-152.

(a) In addition to any other terms or conditions of probation provided for under this chapter, the trial judge may require that defendants who are sentenced to probation pursuant to subsection (c) of Code Section 42-8-34 be ordered to the sentencing options system.

(b) Where a defendant has been ordered to the sentencing options system, the court shall retain jurisdiction throughout the period of the probated sentence as provided in subsection (g) of Code Section 42-8-34, and may modify or revoke any part of a probated sentence as provided in Code Section 42-8-34.1 and subsection (c) of Code Section 42-8-38.

42-8-153.

(a) The department is authorized to establish by rules and regulations a system of administrative sanctions as an alternative to judicial modifications or revocations for probationers who violate the terms and conditions of the sentencing options system established under this article. The department may not, however, sanction probationers for violations of special conditions of probation or general conditions of probation for which the sentencing judge has expressed an intention that such violations be heard by the court pursuant to Code Section 42-8-34.1.

(b) The department shall only impose restrictions which are equal to or less restrictive than the sanction cap set by the sentencing judge.

(c) The administrative sanctions which may be imposed by the department are as follows, from most restrictive to least restrictive:

- (1) Probation detention center or residential substance abuse treatment facility;
- (2) Probation boot camp;
- (3) Department of Corrections day reporting center;
- (4) Intensive probation;
- (5) Electronic monitoring;
- (6) Community service; or
- (7) Probation supervision.

(d) The department may order offenders sanctioned pursuant to paragraphs (1) through (3) of subsection (c) of this Code section to be held in the local jail until transported to a designated facility.

42-8-154.

(a) Whenever an options system probationer is arrested on a warrant for an alleged violation of probation, an informal preliminary hearing shall be held within a reasonable time not to exceed 15 days.

(b) A preliminary hearing shall not be required when:

- (1) The probationer is not under arrest on a warrant;
- (2) The probationer signed a waiver of a preliminary hearing; or
- (3) The administrative hearing referred to in Code Section 42-8-155 will be held within 15 days of arrest.

42-8-155.

(a) If an options system probationer violates the conditions of probation, the department may impose administrative sanctions as an alternative to judicial modification or revocation of probation.

(b) Upon issuance of a petition outlining the alleged probation violations, the chief probation officer, or his or her designee, may conduct a hearing to determine whether an options system probationer has violated a condition of probation. If the chief probation officer determines that the probationer has violated a condition of probation, the chief probation officer is authorized to impose sanctions consistent with paragraphs (4) through (7) of subsection (c) of Code Section 42-8-153. The failure of an options system probationer to comply with a sanction imposed by the chief probation officer shall constitute a violation of probation.

(c)(1) Upon issuance of a petition outlining the alleged probation violations, the hearing officer may initiate an administrative proceeding to determine whether an options system probationer has violated a condition of probation. If the hearing officer determines by a preponderance of the evidence that the probationer has violated a condition of probation, the hearing officer may impose sanctions consistent with Code Section 42-8-153.

(2) The administrative proceeding provided for under this subsection shall be commenced within 15 days, but not less than 48 hours after notice of the administrative proceeding has been served on the probationer. The administrative proceeding may be conducted electronically.

(d) The failure of a probationer to comply with the sanction or sanctions imposed by the chief probation officer or hearing officer shall constitute a violation of probation.

(e) An options system probationer may at any time waive a hearing and voluntarily accept the sanctions proposed by the department.

42-8-156.

(a) The hearing officer's decision shall be final unless the options system probationer files a request for review with the senior hearing officer. A request for review must be filed within 15 days of the issuance of the department's decision. Such request shall not stay the department's decision. The senior hearing officer shall issue a response within seven days of receipt of the review request.

(b) The senior hearing officer's decision shall be final unless the options system probationer files an appeal in the sentencing court. Such appeal shall name the commissioner as

defendant and shall be filed within 30 days of the issuance of the decision by the senior hearing officer.

(c) This appeal shall first be reviewed by the judge upon the record. At the judge's discretion, a de novo hearing may be held on the decision. The filing of the appeal shall not stay the department's decision.

(d) Where the sentencing judge does not act on the appeal within 30 days of the date of the filing of the appeal, the department's decision shall be affirmed by operation of law.

42-8-157.

Nothing contained in this article shall be construed as repealing any power given to any court of this state to place offenders on probation or to supervise offenders.

42-8-158.

This article shall only apply in judicial circuits where the department has allocated certified hearing officers.

42-8-159.

This article shall be liberally construed so that its purposes may be achieved."

SECTION 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.